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court of review can retain control over the infant.[15] Here the need for summary relief is not so great, and the case will be rare where the requirement of security from the prevailing party will prevent his obtaining the infant. The general disregard of any distinction such as that suggested above[16] has resulted in a denial of review of any order in *habeas corpus* proceedings.

ELECTION OF REMEDIES BY SELLER IN CONDITIONAL SALE. — Like other contracts, a contract for a conditional sale depends for its interpretation on the reasonable intent of the parties. The intent of the parties to such a contract seems most completely analogous to the intent of the parties in a mortgage contract.[1] The buyer, as the mortgagor, is to have the complete beneficial use of the property, including even the right to transfer possession and enjoyment of it by sale or mortgage;[2] while the seller, as the mortgagee, is to retain the legal title, merely as security to insure the payment of the purchase price.

The failure to follow this analogy, however, has led in most jurisdictions to the doctrine that in case of default by the buyer, the seller has the choice of two inconsistent alternative remedies and by certain acts, which manifest his intention to rely on one remedy, he is considered as waiving his right to the other. For example, suing for the price is usually held such an election as to vest title in the buyer and to preclude the seller from reclaiming the property.[3] On the other hand, reclaiming the property usually precludes him from suing for the price.[4] The ordinary doctrine of election of remedies is applied. But it is submitted that what is contracted for is not inconsistent alternative remedies but concurrent remedies, the very purpose of one of which is to insure the enforcement and satisfaction of the other.[5] Furthermore, to say that by election on the part of the seller title is passed to the buyer seems contrary[6] to the ordinary rules for transfer of title which require mutual assent by the buyer and seller to some specified act of appropriation. The only act of appropriation agreed upon in such a contract is the discharge of

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[15] See Queen *v.* Barnardo, *supra*, 214.

[16] See Yates *v.* People, *supra*, 432. But see Cox *v.* Hakes, *supra*, 535.

[1] Chicago Ry. Equipment Co. *v.* Merchants' National Bank of Chicago, 136 U. S. 268, 10 Sup. Ct. 999. See WILLISTON, SALES, § 330.

[2] Carpenter *v.* Scott, 13 R. I. 477; Ames Iron Works *v.* Richardson, 55 Ark. 642, 18 S. W. 381.

[3] Recovering judgment is a binding election although this is not satisfied. Crompton *v.* Beach, 62 Conn. 25, 25 Atl. 446; Ramey *v.* Smith, 56 Wash. 604, 106 Pac. 160. So also is merely commencing a suit which is discontinued. Orcutt *v.* Rickenbrodt, 42 N. Y. App. Div. 238, 59 N. Y. Supp. 1008; Frisch *v.* Wells, 200 Mass. 429, 86 N. E. 775.

[4] Minneapolis Harvester Works *v.* Hally, 27 Minn. 495, 8 N. W. 597; Nashville Lumber Co. *v.* Robinson, 91 Ark. 319, 121 S. W. 350.

[5] "Just as the mortgagee may sue for the price and also foreclose his mortgage upon the property, so the seller in a conditional sale should be allowed to sue for the price and also reclaim the property, not as his own, but for the purpose of foreclosing it; . . ." WILLISTON, SALES, § 571, n. 39. See also Judge Sanborn's opinion in Manson *v.* Dayton, 153 Fed. 258, 272.

[6] Bierce, Ltd. *v.* Hutchins, 205 U. S. 340, 346, 27 Sup. Ct. 524, 525.

the debt by the buyer. Those decisions, therefore, which do not so readily construe various acts of the seller as a binding election are preferable.[7]

But even where a doctrine of election obtains, the result reached in a recent case seems extreme and unwarranted. *Winton Motor Carriage Co.* v. *Broadway Automobile Co.*, 118 Pac. 817 (Wash.). The court holds that the mere transfer, as security for a loan, of the note given for the price in a contract for a conditional sale is such an election by the seller as to pass title immediately to the buyer. This decision seems to be contrary to well-settled principles of law in regard to the assignment of secured debts, as well as to the intent of the parties in the particular case. The law is well settled that the assignment of a debt carries with it a right to the security.[8] In like manner the assignment of the seller's claim for the purchase price in a conditional sale whether as a chose in action [9] or in the form of a promissory note [10] carries with it the right to the seller's interest in the property. The reasonable intent of the parties in this particular case, moreover, would seem to be that, since the bank as assignee was taking the note as security for a loan, it was to have all the security possible, connected with the note. The true consequence of the transfer of the note, therefore, it is submitted, was the vesting in the assignee of the right to the property, as security [11] rather than an abnormal springing of the title to the buyer.

CONTRIBUTORY NEGLIGENCE AS DEFENSE TO ACTIONS BASED ON STATUTES. — The general rule is that where a legal duty is imposed by statute, an action may be maintained for an injury caused by a breach of such duty by any individual for whose benefit the statute was enacted.[1] This right of action exists even if the statute does not provide

[7] Suing for the price is not a binding election. Forbes Piano Co. *v.* Wilson, 144 Ala. 586, 39 So. 645; Campbell Printing Press & Mfg. Co. *v.* Rockaway Pub. Co., 56 N. J. L. 676, 29 Atl. 681. Nor is taking a chattel mortgage on the property. First National Bank of Corning *v.* Reid, 122 Ia. 280, 98 N. W. 107. Nor is filing a lien claim. Bierce, Ltd. *v.* Hutchins, *supra*. Nor is an attempt to enforce a mechanic's lien. Warner Elevator Mfg. Co. *v.* Capitol Investment, Building & Loan Association, 127 Mich. 323, 86 N. W. 828.

[8] Where the security is a mortgage on land. See JONES, MORTGAGES, 6 ed., § 817 and cases cited in note. Where the security is a chattel mortgage. Gould *v.* Marsh, 1 Hun (N. Y.) 566. See JONES, CHATTEL MORTGAGES, 4 ed., § 503.

[9] Bank of Little Rock *v.* Collins, 66 Ark. 240, 50 S. W. 694; Cutting *v.* Whittemore, 72 N. H. 107, 54 Atl. 1098.

[10] Kimball Co. *v.* Mellon, 80 Wis. 133, 48 N. W. 1100; Ross-Meehan, etc. Co. *v.* Pascagoula Ice Co., 72 Miss. 608, 18 So. 364; Spoon *v.* Frambach, 83 Minn. 301, 86 N. W. 106. *Contra*, Merchants' & Planters' Bank *v.* Thomas, 69 Tex. 237, 6 S. W. 565. The fact that the conditions of the sale did not appear on the face of the note is no reason for an exception since the security usually passes with the note even if the assignee did not know of its existence. See JONES, MORTGAGES, 6 ed., § 817.

[11] It would probably be held in most jurisdictions that the assignee acquired not the legal title but an equitable right to the security, and that the assignor held the legal title in trust for the assignee. McPherson *v.* Acme Lumber Co., 70 Miss. 649, 12 So. 857.

[1] Ives *v.* Welden, 114 Ia. 476, 87 N. W. 408; Couch *v.* Steel, 3 E. & B. 402. See COM. DIG. TIT. ACTION UPON STATUTE, (A. 1); BISHOP, NON-CONTRACT LAW, § 132.